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EXAMINER				
VONCH, JEFFREY A				
ART UNIT		PAPER NUMBER		
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**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

## Application No.

10/582,313

## Applicant(s)

CREE ET AL.

## Examiner

Jeff A. Vonch

## Art Unit

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 18 August 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-3, 7, 10-14, 16, 18, 27, 28 and 41-47 is/are pending in the application.
- 4a) Of the above claim(s) 1-3, 7, 10-14, 16, 18, 27 and 28 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 41-47 is/are rejected.
- 7) ☒ Claim(s) 41-47 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date 6/12/2009
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

## **DETAILED ACTION**

### ***Election/Restrictions***

1. Applicant's election without traverse of Group II, claims 21-23, 26, 30-32, and 34, in the reply filed on August 18<sup>th</sup>, 2009 is acknowledged.
2. Claims 1-3, 7, 10-14, 16, 18, and 27-28 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected method, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on August 18<sup>th</sup>, 2009.

### ***Information Disclosure Statement***

3. The information disclosure statement filed on June 12<sup>th</sup>, 2009 all entries are crossed out as not being considered because they were initialed as being considered on the IDS filed on July 21<sup>st</sup>, 2008 and November 7<sup>th</sup>, 2007.

### ***Response to Amendment***

4. Applicant's amendments filed August 18<sup>th</sup>, 2009 have been entered. Claims 41-47 are currently under examination on the merits. Claims 21-23, 26, 30-32, and 34 have been cancelled.
5. The rejections of claims 21-23, 26, 30-32, and 34 under Shimizu (U.S. Patent No. 6,274,218) as evidenced by Duncan (U.S. Patent No. 3,592,194) are moot in response to the cancellation of claims 21-23, 26, 30-32, and 34.
6. The rejections of claims 21-23, 26, 30-32, and 34 under Chen et al. (U.S. Patent No. 5,990,377) as evidenced by Duncan (U.S. Patent No. 3,592,194) are moot in response to the cancellation of claims 21-23, 26, 30-32, and 34.

7. Due to Applicant's amendments a new ground(s) of rejection on claims 41-47 has been made as recited below.

***New Rejections***

8. **The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office Action.**

***Claim Rejections - 35 USC § 112***

9. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

10. Claims 41-47 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

11. Claim 41 includes the term "localized disturbances" which is indefinite for not being clearly defined or mentioned at all in the specification. It appears from the reading of the specification that activation stretching creates recesses which the aforementioned prior art disclosed but was stated not to be a localized disturbance. It is not clear what "localized disturbances" are if they are not recesses in the first layer (or means of providing access) to the second layer.

12. Claim 44 recites the limitation "unified structure comprises a vacuum formed and vacuum laminated material". There is insufficient antecedent basis for this limitation in the claim. The claim appears to be improperly mapped to a cancelled claim (40). It will be assumed to be directed to claim 42, otherwise it would be equivalent in scope to claim 43.

***Claim Rejections - 35 USC § 102***

13. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless --

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

14. Claims 1-42 & 45-47 are rejected under 35 U.S.C. 102(b) as being anticipated by Curro et al. (WO 2000/37249) (hereinafter "Curro") as evidenced by Benson et al. (U.S. Patent No.

5,628,097) (hereinafter "Benson") and Ahr. et al. (U.S. Patent No. 4,463,045) (hereinafter "Ahr").

15. Regarding claim 41, Curro teaches a fibrous nonwoven web/elastic film laminate with a surface energy gradient with the surface energy lower on the first material (fibrous nonwoven) and higher on the second material (thermoplastic film) where the apertured nonwoven is bonded to an apertured film (abstract) (page 3, Summary of the Invention). The apertures in the nonwoven layer expose the apertured film (pg. 13, paragraph 4).

16. Curro does not expressly teach activation stretching but incorporates Benson by reference (which discloses a preferred means of aperturing) (page 6, fourth paragraph, and page 7, paragraph 2). Benson describes creating apertures (localized disturbances) through activation stretching (col. 2, lines 50-59).

17. Regarding claim 42, Curro does not expressly teach vacuum aperturing but incorporates Ahr by reference (which discloses a preferred means of aperturing) (pg. 12, paragraph 2). Ahr teaches forming a three dimensional apertured film using a vacuum (col. 16, lines 6-32).

18. Regarding claims 45-47, Curro teaches the composite is used as a topsheet in an absorbent article that can be an incontinent device or catamenial product (page 16, paragraphs 1-2).

***Claim Rejections - 35 USC § 103***

19. Claims 43-44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Curro et al. (WO 2000/37249) (hereinafter "Curro") in view of Thomas (U.S. Patent No. 6,242,074 B1) (hereinafter "Thomas").

20. Regarding claim 41, Curro teaches a fibrous nonwoven web/elastic film laminate with a surface energy gradient with the surface energy lower on the first material (fibrous nonwoven) and higher on the second material (thermoplastic film) where the apertured nonwoven is bonded to an apertured film (abstract) (page 3, Summary of the Invention). The apertures in the nonwoven layer expose the apertured film (page 13, paragraph 4). Curro does not teach vacuum lamination of the composite.

21. Thomas teaches a fibrous nowoven with localized disturbances (slits) (col. 4, lines 37-40 & Fig. 4B) vacuum laminated to an apertured film (col. 8, lines 3-64), which was formed through vacuum aperturing (col. 7, lines 30-45). It would have been obvious to one of ordinary skill in the art to vacuum laminate the partially vacuum formed composite of Curro. One of ordinary skill in the art would have been motivated to have the vacuum laminated composite to provide increased fluid acquisition and a soft feel (col. 2, lines 37-44).

***Response to Arguments***

22. Applicant's arguments filed August 18<sup>th</sup>, 2009 have been fully considered and are persuasive.

***Conclusion***

23. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).
24. A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.
25. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jeff A. Vonch whose telephone number is (571) 270-1134. The examiner can normally be reached on Monday to Thursday 8:30-6:00 EST.
26. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, David Sample can be reached on (571) 272-1376. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.
27. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR

Art Unit: 1794

system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/David R. Sample/  
Supervisory Patent Examiner, Art Unit 1794

/J. A. V./  
Jeff A. Vonch  
Patent Examiner, Art Unit 1794  
October 22<sup>nd</sup>, 2009